

Maine Water Quality Standards Briefing for OGC Front Office

Purposes

- Discuss in detail EPA’s water quality standards actions in Maine related to tribal sustenance fishing, Maine’s positions in litigation challenging EPA’s actions, and Maine’s Petition for Reconsideration submitted to the Agency.
- Identify focus areas for follow-up discussion to inform a decision whether to reconsider any aspects of the actions.

Background

- Prompted by a suit brought by Maine under section 505 of the Clean Water Act (CWA) in 2014 (*State of Maine et al. v. Pruitt et al* (D. Maine)), EPA issued decisions in February, March, and June, 2015, and January and April, 2016, in which EPA approved and disapproved a number of Maine water quality standards under the CWA, including approving a “sustenance fishing” designated use in waters where the Maine Settlement Acts provide a right for tribes to fish for their sustenance and disapproving certain human health criteria as insufficiently protective of that designated use. The Settlement Acts include the federal Maine Indian Claims Settlement Act (MICSA), which ratified the state Maine Implementing Act (MIA).
- On October 8, 2015, Maine filed its second amended complaint challenging the tribal aspects of EPA’s approvals/disapprovals in tribal waters.
- In December 2016, EPA promulgated federal human health criteria for waters in Indian country, as well as a number of other WQS unrelated to tribal issues,¹ to remedy its prior disapproval actions when the State did not do so. Maine has not amended its suit to challenge EPA’s federal promulgation.
- In February 2017, the Maine Governor and three Maine dischargers submitted two separate petitions requesting EPA to reconsider its approval/disapproval actions related to Indian Country (as well as EPA’s other disapprovals not related to tribal issues nor part of the litigation) and to withdraw the 2016 rule. The petitions did not provide any new information but rather conveyed again the comments submitted on EPA’s proposed rule. On May 18, 2017, the Penobscot Nation submitted a letter opposing the petitions for reconsideration.
- On May 5, 2017, EPA moved for a 90-day stay to allow EPA to familiarize decision-makers with the rule, litigation, and petitions, and determine whether it should reconsider the challenged actions. The court granted the motion and ordered the parties to file a joint status report by August 10, 2017. In the report, EPA needs to indicate whether it has decided to reconsider its decisions and if so, may identify the period of time after which the Agency will inform the court of the outcome of its reconsideration (e.g., by requesting a remand of the challenged actions for new decision-making by the Agency).

Deliberative Process / Ex. 5

Topics for Discussion

Deliberative Process / Ex. 5